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679. The weight of authority, however, is to the contrary. See 1 MICH. LAW REV. 65; MECHEM ON SALES, § 1816; also note 49 L. R. A. 679.

STATUTE OF FRAUDS—DELIVERY TO SUSTAIN SALES AGAINST CREDITORS.—R. was a sawmill operator. J. advanced money on a written executory contract with R. to manufacture lumber from logs to be cut from land of R. and such other logs as R. might buy with money advanced by J. Logs and lumber were branded on R.'s millsite with mark of J. R. became bankrupt with the marked logs and lumber on his millsite. The creditors of R. and J. claimed the lumber. There was a statute making sales presumptively fraudulent as to creditors unless there was "actual and continued change of possession" of the thing sold. *Held*, that J. could recover the lumber and the logs. *Stelling v. G. W. Jones Lumber Co.* (1902), — C. C. A. --, 116 Fed. Rep. 261.

Though the lumber was to be graded and measured at the time of shipment and then credited to R. for so much per thousand, the court held there was sufficient delivery to the purchaser to satisfy the statute, and that delivery need not be as complete as under the statute of frauds.

The supreme court of Georgia in *Brunswick Grocery Co. v. Lamar*, (1902) 42 S. E. Rep. 366, where the case turned upon the insufficiency of delivery under the statute of frauds, said: "There is no doubt that the delivery in whatever form it be made is such a one as will place the goods entirely beyond the control of the vendor and completely within the control of the vendee. There is no actual acceptance to satisfy the act so long as the buyer continues to have the right to object to the quantum or quality of the goods." In the former case J. had a right to object to the quantum and certainly to the quality as both measurement and grading had yet to be made.

STATUTE OF FRAUDS—FRAUDULENT CONVEYANCE—DISCHARGE OF A VALID LIEN BY VENDEE.—Land was conveyed without consideration to defraud creditors. The vendee *intended to aid in the fraud*. At the time of conveyance a mortgage constituted a valid lien upon the land, which the vendee paid. Creditors of the vendor brought an equitable action to recover the land free from any lien. *Held*, that the fraudulent vendee had a lien on the land for the mortgage paid by him. *Ackerman v. Merle* (1902,) — Colo. —, 69 Pac. Rep. 983.

This doctrine is sustained in *Garner v. Philips*, 35 Ia. 597, and *Costello v. The Prospect Brewing Co.*, 52 N. J. Eq. 557. But where a conveyance at a sale under a deed of trust was set aside as fraudulent as to creditors, it was held that the fraudulent grantee was not entitled to reimbursement for the amount he paid to redeem from the trust deed, though it was a valid incumbrance on the debtor's property. *McLean v. Latchford*, 60 Miss. 169.

In constructive fraud, the vendee has a lien for purchase money, but not in active fraud. Though a guilty participant, the grantee, on accounting for rents and profits, is entitled to allowance for taxes paid by him and for necessary repairs. *Loos v. Wilkinson*, 113 N. Y. 485, and many authorities cited; 4 L. R. A. 353. *Contra Strike's Case* 1 Blands Ch. R. (Md.) 57.

Where grantee is a participant in the fraud, the deed is void *ab initio* and is as if there had been no conveyance. *Thompson v. Bickford*, 19 Minn. 17. Improvements must generally be compensated for in constructive fraud, but not for improvements made after actual notice by superior claimant: or for premiums on insurance paid save so much as has been adopted and has inured to the benefit of judgment creditors. But taxes paid after bill filed by superior claimant must be reimbursed. *Gordon v. Tweedy*, 74 Ala. 232. If there is a mere suspicion of fraud on the part of the vendee, he has a lien for the sum paid. *U. S. v. Griswold*, 8 Fed. R. 496.